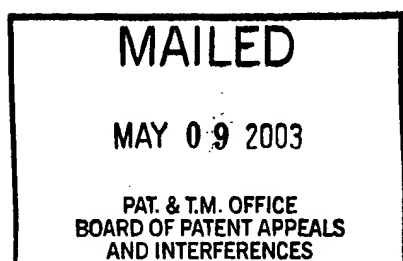


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 25

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



Ex parte ERIC ROBINSON

Appeal No. 2003-0744
Application 09/416,675

ORDER REMANDING TO EXAMINER

A Reply Brief was filed April 22, 2003 (Paper No. 24) in response to the Examiner's Answer mailed December 17, 2002 (Paper No. 21) and has been matched with this application at the Board of Patent Appeals and Interferences. However, there is no indication in the record regarding whether or not the examiner has considered the Reply Brief.

On December 1, 1997, the rule pertaining to the Examiner's Answer and Reply Brief, 37 CFR § 1.193, was amended to read as follows:

§ 1.193 Examiner's answer and reply brief.

. . .

(b)(1) Appellant may file a reply brief to an examiner's answer within two months from the date of such examiner's answer. . . . The primary examiner must either acknowledge receipt and entry of the reply brief or withdraw the final rejection and reopen prosecution to respond to the reply brief. A supplemental examiner's answer is not permitted, unless the application has been remanded by the Board of Patent Appeals and Interferences for such purpose.

(2) Where prosecution is reopened by the primary examiner after an appeal or reply brief has been filed, appellant must exercise one of the following two options to avoid abandonment of the application:

(i) File a reply under § 1.111, if the Office action is not final, or a reply under § 1.113, if the Office action is final; or

(ii) Request reinstatement of the appeal. If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (§§ 1.130, 1.131 or 1.132) or other evidence are permitted.

It should be noted that the Examiner's Answer was mailed December 17, 2002 (Paper No. 21). On February 14, 2003, appellant submitted a Request For One Month Extension of Time under § 1.136(b) (hereinafter "Request"). However, there is

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no indication in the record that the Request was granted. This Request must be considered.

Even if the Request is granted, the Reply Brief was filed on April 22, 2003 (Paper No. 24) and contained a certificate of mailing dated April 16, 2003. The certificate of mailing date is approximately one month past the date that the Request for the extension of time would have expired. Therefore, it appears that the Reply Brief may be untimely filed -- almost four months following the mailing of the Examiner's Answer.

Accordingly, it is

ORDERED that the application is remanded to the Examiner:

1. for consideration of the Request For One Month Extension of Time under § 1.136(b) filed February 14, 2003 (Paper No. 22);
2. for a determination regarding whether the Reply Brief filed April 22, 2003 (Paper No. 24) would be considered timely based on the Extension of Time filed February 14, 2003 (Paper No. 22):

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a. If timely, for consideration of the Reply Brief and written notification to appellant regarding the Examiner's decision;

b. If not timely, for written notification to appellant regarding the Examiner's decision; and

3. for such further action as may be appropriate.

It is important that the Board of Patent Appeals and Interferences be informed promptly of any action affecting the status of the appeal (i.e., abandonment, issue, reopening prosecution).

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: 

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